

Supreme Court, U. S.
FILED

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MICHAEL ROBAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

NO. **78-584**

HENRY ROBINSON
Petitioner

VS.

STATE OF MISSISSIPPI
Respondent

PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of Mississippi

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978

No

HENRY ROBINSON
Petitioner

VS.

STATE OF MISSISSIPPI
Respondent

PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of Mississippi

INTRODUCTORY STATEMENT

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Mississippi entered on May 10, 1978, affirming petitioner's conviction for sale of a controlled substance in the Circuit Court of Adams County, Mississippi. Copies of the judgment and sentencing order are appended in Appendix A.

OPINION BELOW

Petitioner's conviction was affirmed by the Supreme Court of Mississippi on May 10, 1978, with a written opinion marked "Not Designated for Publication."¹ A copy of this opinion is appended and marked Appendix B. The Mississippi Supreme Court denied rehearing without opinion on July 12, 1978. A copy of the official report of the court affirming petitioner's conviction and denying rehearing is appended as Appendix C.

JURISDICTION

The judgment of the Supreme Court of Mississippi affirming petitioner's conviction was entered on May 10, 1978. Rehearing was denied on July 12, 1978. Jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

1. Did the Supreme Court of Mississippi deprive petitioner of his Due Process right to a fair trial by application of an incorrect harmless error standard in reviewing the admissibility of certain irrelevant and prejudicial questions by the prosecutor at petitioner's trial?

1. Rule 43, Miss. Sup. Ct. Rules provides in part that opinions marked "Not Designated for Publication" may not be "cited, quoted, or referred to by any court or in any argument, brief, or other materials presented to any court (except in continuing or related litigation upon an issue such as res judicata, collateral estoppel, or law of the case) [Emphasis added]."

2. Was petitioner's right to Due Process of Law violated by petitioner's conviction and subsequent affirmance thereof when the lack of a sufficiently specific and timely objection to prosecutorial misconduct was held to bar reversal even though the record failed to disclose a knowing and intelligent waiver by petitioner of his constitutional right to a fair trial?

3. Will the Supreme Court of the United States resolve the conflict among the states and the lower federal courts as to the proper constitutional standard for effective assistance of retained counsel?

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides: (

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Fourteenth Amendment to the United States Constitution provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce

any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On December 1, 1976, in the Circuit Court of Adams County, Mississippi, Henry Robinson was indicted by the Grand Jury for sale of a controlled substance, namely: fifteen dosage units of heroin for the sum of \$210.00 (R. 2). A copy of this indictment is appended as Appendix D.

Petitioner was tried under this indictment for sale of a controlled substance on April 22, 1977, and was found guilty as charged (R. 93). Petitioner was sentenced to fifteen years in the Mississippi Department of Corrections (R. 92). (See Appendix A)

At the trial, the State produced only one witness to support its allegation that petitioner was the person who had sold a controlled substance to an agent of the Mississippi Bureau of Narcotics on June 3, 1976, in Adams County, Mississippi; that witness being the agent himself. On the other hand, petitioner submitted testimony by three witnesses, Cora Holmes, Rosalee Johnson and petitioner himself, that petitioner was in New Orleans, Louisiana, on that day, and could not, therefore, have sold the drugs. On numerous occasions, questioning by the prosecutor of the narcotics agent and of the defense witnesses was not only without relevancy to the issue of petitioner's guilt or innocence but was also prejudicial to petitioner's case. Examples of these questions are drawn from the record:

In direct examination by the prosecutor of the narcotics agent, regarding the location of the alleged sale:

Q. The house of Rosalee Johnson? (R. 6)

Q. Now, was that house known to the drug agents? (R. 6)

At this point, petitioner's counsel objected and was sustained. (R. 6)

A few minutes later, the prosecutor asked the narcotics agent about the circumstances of the transaction:

Q. Now, was anyone else present in that room at that time? (R. 9)

Q. Just the two of you? (R. 9)

Q. In your experience, Agent Newsome, is this the way these drug buys generally happen? (R. 9)

Q. And people who sell drugs normally like to do it without any witnesses being around - - (R. 9)

And then:

Q. And what type of room was this that you dealt with him in? (R. 12)

Q. Bed room? (R. 12)

Q. Did it appear to be his bed room? (R. 12)

Cross examination of petitioner by the prosecutor focused on areas having nothing to do with the crime charged, as exemplified in the following questions taken from the record:

Q. Where did you graduate from high school? (R. 51)

Q. You dropped out in the eleventh grade? (R. 52)

Q. All right, then what happened after you dropped out? (R. 52)

Q. How long did you work there? (R. 53)

Q. You didn't work? (R. 54)

Q. All right, where did you next work? (R. 54)

Q. But you don't work? (R. 54)

Q. All right, and what do you use for income or money? (R. 55)

Q. You don't use anything? (R. 55)

Q. You just get by? (R. 55)

Then, taking advantage of petitioner's confusion as to the date of arrest for the offense charged rather than a prior offense of which petitioner was never convicted, the prosecutor asked these questions of petitioner:

Q. When were you arrested on this charge? (R. 55)

Q. May of what? (R. 55)

Q. You were arrested on this charge in May of last year? (R. 55)

After petitioner realized his confusion and replied that he had been arrested in November, 1976, on "this" charge, the prosecutor returned to his former line of questioning:

Q. But you were arrested in May of last year [1976]? (R. 56)

Q. Were you on bond in May of 1976? (R. 56)

Q. Did you notify anyone of this trip to New Orleans, any bondsman or anyone? (R. 56)

Thus, the prosecutor firmly established for the jurors' benefit that petitioner had been arrested on another charge prior to the one for which he was being tried.

Petitioner's last witness, Rosalee Johnson, was similarly questioned by the prosecutor about extraneous, prejudicial matters:

Q. All right, now, where do you work? (R. 73)

After Mrs. Johnson replied, "No place" (R. 73), the prosecutor continued his cross-examination:

Q. Do you own your own home? (R. 73)

Q. Do you have a mortgage on it? (R. 73)

Q. A big mortgage? (R. 73)

Q. How do you pay that? (R. 73)

Q. You have man that pays your bills, is that Henry Robinson? (R. 74)

Q. Henry doesn't help you with the bills? (R. 74)

In a further attempt to show Henry Robinson's guilt by association, the prosecutor questioned Ms. Johnson about

her prior conviction for possession of heroin, and then asked Ms. Johnson this question:

Q. And the night that you were arrested on that charge was Henry in that house that night? (R. 75)

Then after petitioner's counsel had objected to the prosecutor's entire line of questioning of Rosalee Johnson, the court overruled the objection, and the prosecutor was permitted to cross-examine her freely — with cross-examination culminating in this question:

Q. What I am saying, is it not common for people to come to your house in the evenings, all during the evenings, men in particular to be coming in and out of your house in the evenings? (R. 77)

Petitioner moved for a directed verdict at the close of the State's evidence (R. 51), but the motion was overruled, as were the renewed motion for directed verdict (R. 82) and request for peremptory instructions (R. 90) at the end of the defense's case. Following the jury's verdict, petitioner moved for a new trial (R. 94), but this motion was overruled (R. 96).

On May 10, 1978, the Mississippi Supreme Court upheld petitioner's conviction on the ground that even though many of the prosecutor's questions were irrelevant, "they were not so prejudicial" that reversal was warranted. *Robinson v. State of Mississippi*, No. 50,344 (Miss. May 10, 1978). [Emphasis added.] Further, that court noted that petitioner's objection to prosecutorial misconduct was not made with sufficient specificity or timeliness so that the trial court's action in overruling petitioner's objection could be a basis for reversal. The state's highest court viewed what it felt as a lack of compliance with Mississippi's contemporaneous objection rule as a default by petitioner; therefore, reversal was denied. However, nothing in the record indicates

a knowing and intelligent waiver by petitioner of his constitutional right to a fair trial. A copy of the Mississippi Supreme Court's opinion is appended as Appendix B.

On July 12, 1978, petitioner's request for rehearing by the Mississippi Supreme Court was denied.

Question One in this petition was raised and argued on appeal. (See, Point One of Brief of Appellant on direct appeal.) In addition, petitioner raised Questions One and Two in his Petition for Rehearing before the Mississippi Supreme Court. (See, Propositions One and Two of the Petition for Rehearing.) Question Three has not previously been raised on appeal.

REASONS FOR GRANTING THIS WRIT

I.

IMPROPER AND PREJUDICIAL QUESTIONING BY THE PROSECUTOR AT PETITIONER'S TRIAL WAS NOT DECLARED TO BE HARMLESS ERROR BEYOND A REASONABLE DOUBT BY THE MISSISSIPPI SUPREME COURT DESPITE THAT COURT'S AFFIRMANCE OF PETITIONER'S CONVICTION; THUS, MISSISSIPPI'S HIGHEST COURT HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A MANNER INCONSISTENT WITH PRIOR DECISIONS OF THIS COURT.

ARGUMENT

A basic component of Due Process of Law has been determined to be a fair and impartial trial — a trial which focuses on the issue of a defendant's guilt or innocence of

a particular offense. Fundamental fairness demands that matters extraneous to that primary issue be excluded, with certain exceptions, e.g., permitting jurors to learn of a witness's prior conviction in order to assess the credibility of his testimony. Allowing the introduction of irrelevant and prejudicial matters, whether through direct testimony of a witness or through carefully-phrased questions of the prosecutor, is fundamentally unfair; and when such matter is implanted in the minds of jurors, the effect may or may not be significant, depending on the strength of the state's case against the defendant.

In Henry Robinson's case, the State of Mississippi produced only one witness to verify that Henry Robinson was actually the one making a sale of a controlled substance to a state narcotics agent on June 3, 1976, in Adams County, Mississippi. On the other hand, three witnesses (including petitioner) had testified that, in fact, Henry Robinson was in New Orleans, Louisiana, on the day of the supposed sale. Clearly, the credibility of petitioner and petitioner's witnesses was crucial to the issue of guilt. The prosecutor's questions ranged far and wide from that primary issue of guilt, however, and focused on such areas as petitioner's living arrangements with one of his female witnesses; petitioner's past work record (marked by periods of unemployment); an *arrest*, not conviction, of petitioner on another charge; and the lack of employment and seemingly inconsistent financial status therewith of petitioner's girlfriend in an attempt to show that she was a prostitute and a dealer in drugs. All of these matters were totally immaterial to the issue at hand, i.e., whether or not petitioner sold heroin to a narcotics agent, but their effect on the jury's verdict is easy to surmise.

The Mississippi Supreme Court agreed with petitioner that many of the prosecutor's questions were irrelevant and that they were prejudicial to petitioner's case; but said that "... they were not so prejudicial as to require reversal of this case, absent any other error, considering all of the evidence." Appendix B. Such a determination falls short of a declaration that the prosecutorial misconduct in Henry Robinson's trial was harmless beyond a reasonable doubt, or that no reasonable possibility existed that the prosecutor's irrelevant and prejudicial questions might have contributed to the conviction. These two tests, established in *Chapman v. California*, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1966), and *Fahy v. Connecticut*, 375 U.S. 85, 84 S.Ct. 229, 11 L.Ed.2d 171 (1963), respectively, are still considered valid in determining the significance of federal constitutional errors.

In *Holloway v. Arkansas*, ___ U.S. ___, 98 S.Ct. 1173 (1978), decided in April of this year, this Court reiterated a point made in *Glasser v. United States*, 315 U.S. 60, 62 S.Ct. 457, 86 L.Ed. 680 (1942), decided more than three and a half decades before; in *Holloway* the Court declared that

... with guilt a close question, "error, which under some circumstances *would not be ground for reversal*, cannot be brushed aside as immaterial, since there is a real chance that it might have provided the slight impetus which swung the scales toward guilt." 315 U.S., at 67, 62 S.Ct., at 463 (emphasis added).

___ U.S. ___, 98 S.Ct., at 1181

The Court went on to say in *Holloway* that assessment of the strength of the prosecution's case against a defendant is a necessary step in the application of the harmless error standard. In its decision to affirm petitioner's conviction in the present case, the Mississippi Supreme Court's vague reference to "considering all the evidence" *Robinson, supra*, was

the only such assessment. In actuality, the jurors listening to the evidence in Henry Robinson's case were faced with a choice as to which side's witnesses were more believable. The prosecution's evidence certainly could not be termed overwhelming, and the injection of irrelevant material — material suggesting that petitioner's manner of living, as well as that of one of his witnesses, might not be considered by the average citizen to be morally or socially acceptable — could have provided that slight impetus to convict rather than acquit. In other words, it is a reasonable possibility that the prosecutorial misconduct which marked petitioner's trial could have contributed to petitioner's conviction. Thus, the federal constitutional error which occurred in petitioner's trial, after all is considered, cannot be declared harmless beyond a reasonable doubt. Therefore, petitioner's conviction should be reversed.

II.

PETITIONER DID NOT WAIVE HIS CONSTITUTIONAL RIGHT TO A FAIR AND IMPARTIAL TRIAL — ONE FREE OF PROSECUTORIAL MISCONDUCT; YET, THE MISSISSIPPI COURTS SURMISED THAT THE LACK OF A SPECIFIC AND TIMELY OBJECTION TO THE PROSECUTOR'S IMPROPER QUESTIONS WAS EXACTLY SUCH A WAIVER.

ARGUMENT

This Court has consistently declared that a waiver of fundamental constitutional rights must be done knowingly and intelligently, with sufficient awareness of the probable

consequences arising therefrom. See, *Brady v. United States*, 397 U.S. 742, 748, 90 S.Ct. 1463 (1970); *Brookhart v. Janis*, 384 U.S. 1, 4, 86 S.Ct. 1245 (1966); *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938). This Court has also stated that there is a presumption against the waiver of constitutional rights, see, e.g., *Glasser, supra*, and that in some circumstances a defendant may not be precluded from asserting his constitutional rights by the actions or inactions of his attorney. See, *Henry v. Mississippi*, 379 U.S. 443, 451, 85 S.Ct. 564, 13 L.Ed.2d 408 (1965).

In very recent times, this line of decisions has been modified by this Court in decisions pertaining to the applicability of state procedural rules to waivers of constitutional rights. See, e.g., *Wainwright v. Sykes*, 433 U.S. 72, 97 S.Ct. 2497, 53 L.Ed.2d 594 (1977), in which the Court has upheld the use of a "cause" and "prejudice" test to determine the reviewability of state decisions, whether on direct review or through federal habeas corpus, when the state has claimed that a petitioner's procedural default has barred relief.

In this trial — filled with prejudicial, leading questions by the prosecutor pertaining to matters wholly extraneous to the issue at hand — even if petitioner had objected to each and every improper question, such objections never could have erased the inferences of guilt drawn by the jurors from those questions — questions that never should have been asked in the first place. Petitioner did object at one point to a question asked of the narcotics agent by the prosecutor and was sustained; petitioner further objected to an entire line of the prosecutor's questioning of one of the defense witnesses but was overruled, and the improper, prejudicial questioning was allowed to continue. The Mississippi Supreme Court ruled that this second objection was not made with sufficient

specificity and timeliness so that the trial court's error in overruling it could be a basis for reversal of petitioner's conviction. To put it another way, the Mississippi Supreme Court saw the procedural default as a waiver of petitioner's constitutional claim to a fair trial; and supposedly, this waiver of a trial free from prosecutorial misconduct was made knowingly and intelligently by petitioner. However, petitioner did *not* waive such a constitutional right in a knowing and intelligent manner because petitioner was ineffectively assisted by counsel at his trial; and petitioner was unaware that his interests were not being protected.

Here, cause and prejudice are easily established. Without knowing that his case was being slanted against him because of additional, inflammatory material being inserted into the trial, petitioner relied on his attorney to see to it that only proper, relevant evidence was admitted; petitioner's reliance, however, was detrimental to his defense.

Plainly, petitioner did not knowingly and intelligently agree to a deliberate subversion of justice by the prosecutor, and for this reason petitioner's conviction should be reversed.

III.

IT IS TIME FOR THE NATION'S HIGHEST COURT TO ENUNCIATE A CONSTITUTIONAL STANDARD FOR THE EFFECTIVE ASSISTANCE OF RETAINED COUNSEL AND THUS BRING TO A FINAL RESOLUTION THE CONFUSION NOW EXISTING IN THE STATES AND THE LOWER FEDERAL COURTS AS TO THE PROPER STANDARD FOR THIS FUNDAMENTAL CONSTITUTIONAL RIGHT.

ARGUMENT

Effective assistance of counsel is recognized as a basic right in every jurisdiction of this nation, but the definition of that right as it pertains to retained counsel has never been set forth by this Court so that all jurisdictions have a uniform standard by which to gauge retained counsel's effectiveness.

The decision whether or not to afford relief to a defendant whose attorney committed errors, either in trial or on appeal, has been based in some jurisdictions on a determination that the actions of counsel rendered the proceedings a farce, a sham, and a mockery of justice. See, e.g., *United States v. Bubar*, 567 F. 2d 192 (2nd Cir. 1977), and *United States v. Shields*, 573 F. 2d 18 (10th Cir. 1978). If, however, the actions of the attorney in question do not rise to this level of gross incompetency, these jurisdictions bar relief on that ground. In other courts, the standard of competence has been higher, with "effective assistance of counsel" being defined in various ways:

counsel reasonably likely to render *and rendering*

reasonably effective assistance.²

A defendant in a criminal trial is entitled to be represented by an attorney who exhibits a minimum degree of professional competency.³

In this circuit "trial counsel fails to render effective assistance when he does not exercise the customary skills and diligence that a reasonably competent attorney would perform under similar circumstances."⁴

[whether] the defense counsel's representation [is] within the range of competence demanded of attorneys in criminal cases[.]⁵

The Fifth Circuit has also adopted a more stringent test of reasonable effectiveness for retained counsel: whether defense counsel's conduct makes the trial fundamentally unfair or puts the court on notice that his client is not receiving reasonably effective assistance. Whenever a lawyer's ineffectiveness has rendered a trial fundamentally unfair, whether he is retained or appointed and whether his action or inaction was known or unknown to state trial officials, then a deprivation of due process has resulted, and the Fifth Circuit would grant relief. Where retained counsel's performance is not so grossly deficient as to render the trial funda-

2. *MacKenna v. Ellis*, 280 F. 2d 592 (5th Cir. 1960); *Beasley v. United States*, 491 F. 2d 687 (6th Cir. 1974).
3. *United States ex rel. Rooney v. Housewright*, 568 F. 2d 516 (7th Cir. 1977), Appendix at 525.
4. *Monteer v. Benson*, 574 F. 2d 447, 450 (8th Cir. 1978).
5. *Marzullo v. State of Maryland*, 561 F. 2d 540, 543 (4th Cir. 1977). [Adopting this Court's general standard as set forth in *McMann v. Richardson*, 297 U.S. 759, 90 S.Ct. 1441 (1970)]

mentally unfair, yet is adjudged to be less than reasonably effective, the Fifth Circuit would grant relief if it can be shown that some responsible state official connected with the criminal proceeding who could have remedied the conduct failed in his duty to do so. See, *Fitzgerald v. Estelle*, 505 F. 2d 1334 (5th Cir. 1975). Such relief is founded on the Sixth Amendment, made applicable to the States by the Fourteenth Amendment in *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963).

For a defendant to retain his own counsel in Mississippi, however, is considered to be a waiver of any claim to ineffective assistance by counsel, as declared by the Supreme Court of Mississippi in *Miller v. State of Mississippi*, 231 So. 2d 178 (Miss. 1970), and as reiterated in *Rogers v. State of Mississippi*, 307 So. 2d 551 (Miss. 1975), although in *Rogers, supra*, the court gave a possible indication that a different result might have been considered had the trial been rendered a "farce and a mockery of justice" by retained counsel's performance. *Rogers, supra*, at 553.

Mississippi seems to take the view that if one can pay the price, one cannot complain about the quality of the results. But the quality of an attorney's work cannot and should not be judged arbitrarily according to the source of payment for attorney's fees — whether the government or the defendant. The basic point to be considered is still whether or not a defendant has received the quality of representation necessary to protect his interests. A defendant who can afford to retain his own attorney in all likelihood is no more blessed with knowledge and skills of the law than is an indigent defendant for whom the court must appoint counsel. Furthermore, this Court declared in *McMann v. Richardson*, 297 U.S. 759, 90 S.Ct. 1441 (1970), that some-

thing more than incompetent counsel is necessary to effectuate the constitutional right to counsel in criminal prosecutions; that, in fact, "defendants facing felony charges are entitled to the effective assistance of competent counsel [citation omitted]" *McMann, supra*, at 771.

Mississippi's view that the private retention of counsel precludes any complaint of incompetency is nothing more than a rigid adherence to a false notion that an accused's attorney only need be a figurehead, or at least only go through the set procedures required of a defense attorney. Such a notion does not comport with the Court's explicit statement that "defendants facing felony charges are entitled to the effective assistance of competent counsel." *Id.* That statement does not show any intention by this Court to deny effective assistance by competent counsel to those defendants able to employ their own attorneys. Therefore, a need exists for this Court to set forth the proper constitutional standard for assistance of privately-retained counsel.

In the present case, a review of the record shows several failings by petitioner's attorney which resulted in substantial prejudice to petitioner's defense. Failure to object to numerous irrelevant, prejudicial questions by the prosecutor (as detailed in the Statement of the Case and in Ground I, *supra*) can hardly be considered as sound trial strategy and does not fulfill the requirements of effective assistance by competent counsel. Additionally, petitioner's attorney did not request the judge to instruct the jury to disregard the prosecutor's questioning of the narcotics agent to which petitioner's objection was sustained. Considering the probable prejudice resulting from the introduction of such evidence, it is questionable that such a tactic would have been used by a reasonably competent defense attorney.

Finally, petitioner was also denied effective assistance of counsel on appeal to the Supreme Court of Mississippi. Petitioner's retained counsel for his state appeal, different from his retained counsel at trial, failed to mention the numerous shortcomings exhibited by petitioner's trial attorney as a ground for relief, thus neglecting an important issue in petitioner's case.

For the above reasons, petitioner's conviction should be reversed.

Respectfully submitted,
HENRY ROBINSON,
PETITIONER

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APPENDIX A

On the 22nd day of April, 1977, the same being the TWENTH [sic] day of the Term, the following ORDER was had and entered on the Minutes which is in the words and figures as follows, to-wit:

STATE OF MISSISSIPPI

VS.

NO. 6887

HENRY ROBINSON

This day came the State by her District Attorney and the accused, Henry Robinson, being placed at the bar of the Court in the custody of the Sheriff of this County, and having been arraigned upon the Bill of Indictment filed herein, and a plea of "not guilty" to the charge of Sale of Controlled Substance, filed in said Indictment having been entered, a jury composed of Ray Graham Baker and eleven other good and lawful citizens being called, who being duly elected, empaneled and sworn the issue joined to try, after hearing the evidence, arguments of counsel and receiving the instructions of the Court, retired to their room to consider their verdict, afterwards returned into Open Court the following verdict:

WE THE JURY FIND THE DEFENDANT GUILTY
AS CHARGED

Thereupon, the Defendant, Henry Robinson, was sentenced to serve Fifteen (15) years in the State Department of Corrections.

APPENDIX B

IN THE SUPREME COURT OF MISSISSIPPI

NO. 50,344

HENRY ROBINSON

V.

STATE OF MISSISSIPPI

THIS OPINION IS NOT FOR PUBLICATION

COURT FROM WHICH APPEALED:

Circuit, Adams

TRIAL JUDGE:

Lenox L. Forman

ATTORNEYS:

Appellant

Firnist J. Alexander, Jr.

Brown, Alexander & Sanders

Appellee

A. F. Summer, Attorney General

BY: Billy L. Gore, Special

Assistant Attorney General

NATURE OF THE CASE:

Sale of Controlled Substance

DISPOSITION

Affirmed.

BEFORE ROBERTSON, WALKER AND COFER

WALKER, JUSTICE, FOR THE COURT:

This is an appeal from a conviction of the sale of heroin after a jury trial in the Circuit Court of Adams Coun-

ty, Mississippi. Appellant was sentenced to fifteen years in the Mississippi State Penitentiary.

The sole assignment of error in this case is that the trial court should not have permitted the district attorney to cross-examine appellant and his witness, Rosalee Johnson, concerning irrelevant and prejudicial matters.

It is not necessary for us to detail any of the facts which form the basis for this error. While many questions of which appellant complains were indeed irrelevant, they were not so prejudicial as to require reversal of this case, absent any other error, considering all of the evidence. *Compare Isaacks v. State*, 337 So.2d 928 (Miss. 1976).

Additionally, there was no objection made to any of the questions asked of appellant or Ms. Johnson until just prior to the end of the trial when defense counsel voiced a general objection to the relevancy of the entire line of questioning of Rosalee Johnson concerning her conviction of possession of heroin. It is well settled that contemporaneous and specific objection to testimony must be made at trial in order for such testimony to be considered grounds for reversal on appeal. *Cox v. State*, 326 So.2d 794 (Miss. 1976); *Ratliff v. State*, 313 So.2d 386 (Miss. 1975). Some of the questions asked of Ms. Johnson prior to the general objection by defense counsel to the relevancy of "this entire line of questioning" were proper. In view of this fact, it is clear that the objection was neither specific nor sufficiently contemporaneous enough for the trial court's action in overruling it to be a sufficient basis for reversal of this case. Therefore, the verdict and sentence are affirmed.

AFFIRMED.

PATTERSON, C.J., SMITH, P.J., ROBERTSON, P.J., SUGG, BROOM, LEE, BOWLING AND COFER, JJ., CONCUR.

APPENDIX C

Henry ROBINSON

v.

STATE of Mississippi.

No. 50344.

Supreme Court of Mississippi.

May 10, 1978.

Rehearing Denied July 12, 1978.

Appeal from Circuit Court, Adams County; Lenox L. Forman, Judge.

Brown, Alexander & Sanders, Firnist J. Alexander, Jr., Jackson, for appellant.

A. F. Summer, Atty. Gen. by Billy L. Gore, Sp. Asst. Atty. Gen., Jackson, for appellee.

Before ROBERTSON, P. J., and WALKER and CO-FER, JJ.

AFFIRMED.

PATTERSON, C. J., SMITH, P. J., and SUGG, BROOM, LEE and BOWLING, JJ., concur.

(359 So.2d 1355 [Miss. 1978])

APPENDIX D

THE STATE OF MISSISSIPPI, CIRCUIT COURT
Adams County NOVEMBER Term, A. D., 1976
ADAMS COUNTY No. 6887

THE GRAND JURORS of the State of Mississippi, taken from the body of the good and lawful citizens of Adams County, elected, empaneled, sworn and charged to inquire in and for the said County of Adams, at the term aforesaid, of the Court aforesaid, in the name and by the authority of the State of Mississippi, upon their oath, present that Henry Robinson late of the County aforesaid, on the 3rd day of June, 1976, in the County aforesaid, did wilfully, unlawfully and feloniously sell and deliver to Barry Newsome fifteen (15) dosage units of the controlled substance known as heroin for the sum of \$210.00 cash money of the United States of America contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi.

/s/ Edwin E. Benoist, Jr.
District Attorney

A True Bill
SALE OF A CONTROLLED SUBSTANCE
Charge.

/s/ Jack Sojourner
Foreman of the Grand Jury.

WITNESSES:
Barry Newsome

Filed 1st day of Dec., 1976

/s/ Clerk

Recorded

day of

, 19

Clerk By

, D. C.